

Senate File 2200 - Introduced

SENATE FILE 2200
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3141)

A BILL FOR

1 An Act relating to transfer of guardianship for a child in need
2 of assistance to the probate court.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 232.104, subsection 7, Code 2009, is
2 amended to read as follows:

3 7. a. Following an initial permanency hearing and the
4 entry of a permanency order which places a child in the custody
5 or guardianship of another person or agency, the court shall
6 retain jurisdiction and annually review the order to ascertain
7 whether the best interest of the child is being served. When
8 the order places the child in the custody of the department
9 for the purpose of long-term foster care placement in a
10 facility, the review shall be in a hearing that shall not be
11 waived or continued beyond twelve months after the initial
12 permanency hearing or the last permanency review hearing. Any
13 modification shall be accomplished through a hearing procedure
14 following reasonable notice. During the hearing, all relevant
15 and material evidence shall be admitted and procedural due
16 process shall be provided to all parties.

17 b. In lieu of the procedures specified in paragraph "a",
18 the court may close the child in need of assistance case by
19 transferring jurisdiction over the child's guardianship to the
20 probate court. Before transferring jurisdiction, the court
21 shall direct the probate clerk to issue letters of appointment
22 for guardianship and docket the case in probate.

23 Sec. 2. Section 633.559, Code 2009, is amended to read as
24 follows:

25 **633.559 Preference as to appointment of guardian.**

26 The Except for a minor child for whom the court's
27 jurisdiction over the child's guardianship was established
28 pursuant to transfer of the child's case in accordance with
29 section 232.104, the parents of a minor child, or either of
30 them, if qualified and suitable, shall be preferred over all
31 others for appointment as guardian. Preference shall then be
32 given to any person, if qualified and suitable, nominated as
33 guardian for a minor child by a will executed by the parent
34 having custody of a minor child, and any qualified and suitable
35 person requested by a minor fourteen years of age or older, or

1 by standby petition executed by a person having physical and
2 legal custody of a minor. Subject to these preferences, the
3 court shall appoint as guardian a qualified and suitable person
4 who is willing to serve in that capacity.

5 Sec. 3. NEW SECTION. 633.675A Child in need of assistance
6 cases — terminating guardianship.

7 Notwithstanding section 633.675, if the court appointed a
8 guardian for a minor child for whom the court's jurisdiction
9 over the child's guardianship was established pursuant to
10 transfer of the child's case in accordance with section
11 232.104, the court shall not enter an order terminating the
12 guardianship before the child becomes age eighteen unless the
13 court finds by clear and convincing evidence that the best
14 interests of the child warrant a return of custody to the
15 child's parent.

EXPLANATION

17 This bill relates to transfer of guardianship for a child in
18 need of assistance to the probate court.

19 Code section 232.104, relating to permanency hearings
20 for children in need of assistance who are subject to an
21 out-of-home placement order entered by the juvenile court, is
22 amended. Under current law, once there has been an initial
23 permanency hearing which places a child in the custody or
24 guardianship of another person or agency, the juvenile
25 court retains jurisdiction and annually reviews the order to
26 ascertain whether the best interest of the child is being
27 served. The bill allows the juvenile court instead to close
28 the case by transferring jurisdiction over the guardianship of
29 the child to the probate court.

30 Before transferring jurisdiction, the court is required to
31 direct the probate clerk to issue letters of appointment for
32 guardianship and docket the case in probate.

33 The bill applies an exception to current probate law in
34 Code section 633.559 which otherwise establishes an overall
35 preference for child guardianships to be with the child's

1 parent. Under the bill, the preference does not apply to
2 transferred child in need of assistance cases.

3 New Code section 633.675A prohibits the probate court from
4 entering an order terminating a transferred child in need of
5 assistance guardianship before the child becomes age 18 unless
6 the court finds by clear and convincing evidence that the best
7 interests of the child warrant a return of custody to the
8 child's parent. Otherwise, current Code section 633.675 would
9 authorize the probate court to terminate the guardianship if
10 various circumstances have changed or the court has determined
11 the guardianship is no longer necessary for any other reason.